

MEMORANDUM

OCTOBER 28, 1982

TO: BOSTON REDEVELOPMENT AUTHORITY

FROM: ROBERT J. RYAN, DIRECTOR

SUBJECT: ZONING TEXT AMENDMENT NO. 90; DEFINITION OF DORMITORY

James L. Buechl and other residents of the Audubon Circle area have petitioned the Zoning Commission for an amendment to the text of the Boston Zoning Code, designed to correct deficiencies in the definition of "dormitory". The Zoning Code presently defines dormitory as "any dwelling (other than a fraternity or sorority house) occupied primarily as a place of temporary abode by persons attending educational institutions". The Zoning Text Amendment attempts to address a situation whereby colleges and universities can acquire control of residential structures for less-than-50% student occupancy, thus avoiding designations as "dormitories" and the need to go to the Board of Appeal for conditional use permits. However, the proposed amendment attempts, through a change in the definition of dormitory, to make a distinction between buildings owned, leased, or constructively controlled by a college or university, in which 25% occupancy by students would constitute a dormitory and buildings not so owned, leased, or effectively controlled, in which the present 50% rule would remain. While desirable, this distinction, based upon ownership as opposed to use, may create legal difficulties for the amendment as it may be argued that this violates the equal protection of the Constitution. If this were the only issue, we could attempt to resolve the issue at this time; however, the proposed definition before us includes other problem areas including a provision that a violation occurs upon the signing of a purchase and sale or option agreement, which point in time is not administratively ascertainable or verifiable and, therefore, unenforceable by the Building Commission.

I recommend that the Authority advise the Zoning Commission to deny the proposed amendment and, at the same time, notify the Commission that we are finalizing a comprehensive redefinition of "dormitory" that we are presently reviewing with a number of institutions and we should be in a position to submit the same to the Commission in the very near future.

VOTED: That in regard to Text Amendment Application No. 90 by James L. Buechl and other residents of the Audubon Circle area, concerning the definition of "dormitory", the Boston Redevelopment Authority recommends that the Zoning Commission deny the Amendment because the proposed form, among other defects, attempts to make a distinction based upon ownership as opposed to use, which, while desirable, may create legal difficulties for the amendment as it may be argued that this violates the equal protection of the Constitution. If this were the only issue, we could attempt to resolve the issue at this time; however, the proposed definition before us includes other problem areas including a provision that a violation occurs upon the signing of a purchase and sale or option agreement, which point in time is not administratively ascertainable or verifiable and, therefore, unenforceable by the Building Commission. The Boston Redevelopment Authority is finalizing a comprehensive redefinition of "dormitory" that is presently being reviewed with a number of institutions and should be submitted to the Commission in the very near future.

Received by
Zoning Commission
7/14/82

Text Amendment Application No. 90
James L. Buechl et al.
Definition of Dormitory

TO THE ZONING COMMISSION
OF THE CITY OF BOSTON:

The undersigned as owner(s) of property at the addresses listed below hereby petition(s) for a change in the text of the Boston Zoning Code as established by Chapter 665 of the Acts of 1956, as amended, as follows: By substituting the following definition of "dormitory" for that which presently appears in Article 2, Section I, Item 11A of the Boston Zoning Code:

(11A) "Dormitory", any dwelling, other than a fraternity or sorority house, (regardless of the presence or absence of communal dining facilities), which is either (i.) a dwelling, no part of which is owned, leased, under option or purchase and sale agreement to or constructively controlled by or on behalf of an educational institution and in which 50% or more of the sleeping rooms or dwelling units therein are occupied as a place of temporary abode by persons attending educational institutions, or (ii.) a dwelling owned, leased, under option or purchase and sale agreement to or constructively controlled by or on behalf of, in whole or in part, an educational institution and in which 25% or more of the sleeping rooms or dwelling units therein are occupied as a temporary abode by persons attending educational institutions.

In those cases in which the ownership, control, use or occupancy of a dwelling or of any dwelling unit therein is uncertain, the Building Commissioner shall request from the owner or from a duly authorized agent of the owner such information, by affidavit or otherwise, as may be reasonably necessary to enable the Commissioner to determine if a dwelling is a dormitory hereunder. The failure or refusal to provide such information within fifteen (15) days Petitioner: James L. Buechl, et. al. of any such request shall cause the Commissioner to determine that such dwelling is a dormitory under the Boston Zoning Code.

By: James L. Buechl

Address: 462 Park Drive

Boston, Mass. 02215

Tel. No. 262-9127

Date: July 12, 1982

From Section 5-4 of Boston Zoning Code as amended August 18, 1980:

"The estimated average cost to the City of a hearing on a proposed amendment of this code is hereby established as one hundred and fifty dollars".

Kathleen Schultz 10 Keswick St Boston Ma 02215
William J. Buechl 466 Park Dr
James G. Moran 462 Park Dr, Boston